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9 UNITED STATES BANKRUPTCY COURT
10 WESTERN DISTRICT OF WASHINGTON

11 In re

12 STRATEGIES 360, INC.,

13 Debtor.

No. 23-12303

KEYBANK'S LIMITED OBJECTION TO
THE DEBTOR'S EMERGENCY MOTION
FOR ORDER AUTHORIZING INTERIM
USE OF CASH COLLATERAL

14
15 KeyBank, N.A. ("KeyBank"), a secured creditor in this case, objects to the Debtor's Emergency
16 Motion for Order (1) Authorizing Interim Use of Cash Collateral, (2) Granting Adequate Protection,
17 and (3) Setting Final Hearing (the "Motion"). In support of such objection, KeyBank states the
18 following:

19 1. KeyBank is the Debtor's secured line of credit lender, owed \$3,665,639.30 in principal,
20 plus accrued and accruing contract and default rate interest, attorneys' fees and costs (the "KeyBank
21 Secured Claim"), as documented in part by a Business Loan Agreement, Promissory Note, Commercial
22 Security Agreement, Commercial Guaranty, and Uniform Commercial Code financing statement filed
23 with Washington's Department of Licensing and other documents (collectively, the "KeyBank Loan

LIMITED OBJECTION TO MOTION FOR ORDER (1)
AUTHORIZING USE OF CASH COLLATERAL– Page 1

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1 Documents”). Copies of the KeyBank Loan Documents are already in the record as exhibits attached
2 to the Declaration of John Rosenberg. Dkt. No. 6.

3 2. The KeyBank Secured Claim is secured by first priority valid and perfected security
4 interests in substantially all of the Debtor’s personal property (the “Collateral”), including the Debtor’s
5 cash collateral (the “Cash Collateral”).

6 3. On or about October 6, 2023, the Superior Court for the State of Washington at King
7 County entered its “Order Granting Motion for Judgment on the Pleadings or Alternatively Summary
8 Judgment” (the “Sorenson Judgment”). The Sorenson Judgment awards damages in favor of Mr. Eric
9 Sorenson (“Sorenson”) and against the Debtor and its Chief Executive Officer, Ronald D. Dotzauer
10 (Dotzauer”), in the amount of \$6,153,027.47. A copy of the Sorenson Judgment is referenced in and
11 attached to the Debtor’s Statement of Financial Affairs.

12 4. As is set forth in the Complaint and further described in the Sorenson Declaration (Dkt.
13 No. 7), Sorenson and Dotzauer were previously co-owners of the Debtor. Dotzauer contends that in
14 2018, “the Debtor removed Sorenson as president, for cause...and as part of the Debtor’s termination
15 of the relationship with Sorenson, the Debtor and Dotzauer agreed pay Sorenson \$6.0 million.” Id. at
16 ¶¶ 22-25. However, Mr. Dotzauer’s declaration does not disclose this \$6.0 debt (the largest claim
17 against the Debtor in this Chapter 11), was, on information and belief, entered into so Mr. Dotzauer
18 personally could acquire all of Mr. Sorenson’s shares in the Debtor, thus obligating the Debtor to pay
19 for his personal acquisition of Sorenson stock.

20 5. KeyBank was unaware of the Debtor’s failure to pay the Sorenson claim when it became
21 due and the subsequent Superior Court litigation by Sorenson against the Debtor until after entry of the
22 Sorenson Judgment in October 2023 when Sorenson’s counsel forwarded KeyBank a copy of the
23 judgment. The Debtor’s failure to notify KeyBank was in violation of the “Notices of Claims and

1 Litigation” section of its Business Loan Agreement. KeyBank thereafter notified the Debtor it would
2 not be renewing the line of credit loan facility past its November 1, 2023 maturity date. Based on
3 KeyBank’s subsequent discussions with Debtor representatives, KeyBank was advised the Debtor
4 and/or Mr. Dotzauer intended to repay or purchase the KeyBank Secured Claim.

5 6. KeyBank was not consulted by any Debtor representatives concerning a) the Debtor’s
6 intent to seek bankruptcy relief; b) any request for a consensual use of KeyBank’s cash
7 collateral; c) the terms of the Debtor’s proposed order; or d) the payment items to be included
8 in the cash collateral budget itself attached to the Motion as Exhibit A (the “Budget”). As
9 reflected in the Declaration of John Rosenberg, until very recently, the Debtor has always
10 maintained its chief operating account at KeyBank, account number ending in 4654 (the
11 “KeyBank Operating Account”). See Rosenberg Declaration, ¶¶ 20-21. It was only after review
12 of the Debtor’s bankruptcy pleadings that KeyBank learned the Debtor had opened and
13 maintained a new depository account at Bank of America, account ending in 9722 (the “B of A
14 Account”). Based on KeyBank’s further recent investigations of account activity in the
15 KeyBank Operating Account and other Debtor or Debtor affiliate accounts, it appears that the
16 Debtor diverted at least \$3.0 million from the KeyBank Operating Account to the B of A
17 Account. In order to adequately protect KeyBank’s Cash Collateral, the Debtor should provide
18 a full accounting of how these diverted funds were expended and should be ordered to
19 immediately return them to the KeyBank Operating Account. The Debtor should be further
20 ordered to deposit all other existing and future Cash Collateral in the KeyBank Operating
21 Account and to advance from such Cash Collateral all authorized interim expenses authorized
22 to be paid under this Court’s interim cash collateral order. The interim order should also prohibit
23 any Debtor use of Cash Collateral for the purpose of paying any non-Debtor obligations of its

1 affiliates unless approved by further order of this Court. *See* Statement of Financial Affairs, No.
2 25.

3 7. The Debtor's submissions suggest this improper Cash Collateral diversion was
4 necessitated by some perceived risk of a "set-off" by KeyBank against operating funds. In fact, the
5 bank never threatened any such action. To the contrary, the bank then had, and still has, the biggest
6 stake (after Sorenson) in the success of the Debtor's operations and with that success, repayment of the
7 line of credit loan in full. As any seasoned bankruptcy secured lender professional will tell you, setoffs
8 and bounced payrolls are never conducive to full bank recoveries.

9 8. For that reason, as the maturity date of the line of credit approached, KeyBank contacted
10 the Debtor to remind it that line of credit advances would no longer be available after the maturity date
11 and the bank therefore urged the Debtor to utilize the availability remaining under the line of credit to
12 obtain an advance in a sufficient amount to sustain the operations pending a refinancing. The Debtor
13 acted on this suggestion but unfortunately the bank's cooperative gesture was unfortunately not
14 reciprocated. It is regrettable that in addition to moving KeyBank Cash Collateral to another bank,
15 KeyBank has not been afforded the customary courtesy of any consultation regarding the Debtor's
16 proposed cash collateral use prior to the Debtor's filing of the Motion. KeyBank was also not informed
17 of the November 15, 2023 resignation of its chief financial officer, Mr. Yong Lee, nor informed Mr.
18 Rosenberg (the Debtor's existing comptroller) would be serving as his replacement.

19 9. KeyBank is particularly concerned about the fragility of this PR consulting business in
20 a Chapter 11 context. The Debtor is similar to a law firm, in that its assets mainly consist of receivables
21 and good will generated by its professionals. Any defection of its key professionals with their own
22 clients could very quickly erode its cash flow and render a large amount of its A/R on the books
23 uncollectible. The value of A/R could potentially evaporate very quickly here. There is also the issue

1 that its customers are in some cases political candidates or other political entities whose credit-
2 worthiness and funding may depend on contributions that may evaporate at any time. For that reason,
3 the face amount of AR and the “equity cushion” the Debtor contends is sufficient—the indubitable
4 equivalence of KeyBank’s allowed secured claim—is not comforting on their face without further
5 scrutiny.

6 10. However, the Debtor’s Motion airily assumes there is a bullet proof “equity cushion” in
7 the current level of A/R plus cash on hand. However, Bankruptcy Rule 4001(b)(3) requires that interim
8 cash collateral use be narrowly limited to “of that amount of cash collateral as is necessary to avoid
9 immediate and irreparable harm to the estate pending a final hearing.” The Debtor’s one page Budget
10 does not provide any level of detail within the broad categories of expense. For that reason, KeyBank
11 has requested the following follow-up information to determine if the requested expenditures fall within
12 Rule 4001’s requirements and if the proffered “equity cushion” adequate protection is indeed adequate:

- 14 • What is the total cash collateral amount the Debtor is asking for authority to
15 spend prior to the final cash collateral hearing to avoid “Immediate and
16 irreparable harm pending the final hearing”?
- 17 • Please provide the details on all transfers, deposits and any payments into or out
18 of the Bank of America account
- 19 • What are the details of the resignation/termination of Yong Lee?
- 20 • Please provide a comparison of the projected revenues and expenses in the BK
21 budget to the last projection provided to Key.
- 22 • Please provide a current A/R aging report and A/P aging report.
- 23 • What cash if any is proposed to be going to Canadian operations?
- What payments are proposed to Mr. Dotzauer or any other insiders?
- What are the “bonus” amounts in the budget and who are they payable to?
- What is the Jake Global Settlement?
- What is the difference between “offices leases” payments and “rents”?
- Please provide detail on G & A costs
- What are Google/Facebook “Hard Costs”?
- What is the Jago payment?
- What is your total FTE count of professionals today and what is it projected to
be at January 2024 month end?

- What are amounts and payees of the pre-petition outstanding checks drawn on Debtor bank accounts?
- Can any Budgeted items be deferred until the final order without “immediate and irreparable harm” to the business?

11. The Debtor’s Motion also requests that the Court award a \$125,000 carve-out for professionals and that the Court order those professional claims also be superior to even a Section 507(b) claim should KeyBank’s adequate protection be found to be inadequate. Such a provision is not proper in an interim order on shortened notice as payment of professionals is not necessary to avoid immediate and irreparable harm. As the Debtor’s Statement of Financial Affairs confirms, the Debtor’s counsel has already received substantial retainers and eve of bankruptcy payments and there is no prejudice to its differing its demand for a carve out until the final hearing.

12. Notwithstanding the foregoing, KeyBank does not object to the payment of employee wages and benefits, facilities costs and other demonstrably necessary expenditures that cannot be deferred without immediate harm to the Debtor’s operations. Attached as Exhibits A and B are marked and clean drafts of a proposed form of order reflecting the terms KeyBank respectfully submits are required for the Debtor’s proposed interim Cash Collateral use to fall within the narrow parameters of Bankruptcy Rule 4001(b) and to provide adequate protection of KeyBank’s interest in Cash Collateral.

DATED this 30th day of November, 2023.

/s/Bruce W. Leaverton

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Attorneys for KeyBank, N.A.

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

STRATEGIES 360, INC.,

Debtor.

No. 23-12303

[PROPOSED] ORDER (1)
AUTHORIZING INTERIM USE OF
CASH COLLATERAL, (2) GRANTING
ADEQUATE PROTECTION, AND (3)
SETTING FINAL HEARING

THIS MATTER came before the Court on the motion (the “Motion”) of Strategies 360, Inc. (the “Debtor”), debtor-in-possession in this case, pursuant to §§ 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-3 and 9013-1(d)(2)(E) of the Local Rules of Bankruptcy Procedure for the Western District of Washington (the “Local Rules”), for the entry of an order authorizing, on an interim basis, the Debtor’s use of cash collateral pursuant to a Budget (defined below), authorizing the Debtor to grant, on an interim basis, adequate protection in favor of KeyBank National Association (“KeyBank”). The Court has reviewed the files and records herein, makes the following findings of fact, and reaches the following findings of

ORDER (1) AUTHORIZING INTERIM USE OF CASH
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fact and conclusions of law based on the written submissions of the Debtors and representations made at the hearing on the Motion:

FINDINGS AND CONCLUSIONS

On an interim basis, the Court makes the following findings of fact and conclusions of law with respect to the relief granted in this Order:

General Background

A. The Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code (“Case”) on November 27, 2023 (the “Petition Date”). The Debtor retains control over ~~its~~~~their~~ assets and continues to operate ~~its~~~~their~~ business pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

B. The Debtor sent notice of the hearing on the Motion to: KeyBank; the U.S. Trustee; the U.S. Attorney’s Office; all of its creditors; and state and federal taxing authorities. Such notice is adequate and reasonable under the circumstances pursuant to Bankruptcy Rules 4001 and Local Rules 4001-3 and 9013-1(d)(2)(E).

The Prepetition Credit Agreement

C. As of the Petition Date, the Debtor ~~is~~~~was~~ indebted to KeyBank under a fully matured, past due and owing ~~reducing revolving~~ line of credit with a balance of approximately \$3,665,639.30 as of November 22, 2023 (the “KeyBank Loan”).

D. The terms of the KeyBank Loan are set forth in various loan documents, including a Business Loan Agreement dated March 27, 2023 (the “KeyBank Loan Agreement”), ~~and~~ Promissory Note dated November 5, 2021 (the “KeyBank Note”) and Security Agreement dated November 5, 2021 (the “KeyBank Security Agreement”).

E. The KeyBank Note matured on November 1, 2023.

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1 F. Pursuant to the a KeyBank Security Agreement dated November 5, 2021 (the "KeyBank
2 Security Agreement"), the Debtor granted KeyBank a blanket security interest in the Debtor's personal
3 property (the "Pre-Ppetition Collateral") to secure the KeyBank Loan. The Pre-Ppetition Collateral
4 includes the Debtor's accounts receivable (the "A/R"), cash, and depository accounts and all other cash
5 proceeds of Pre-Petition Collateral (the "Pre-Petition Cash Collateral," and together with all the
6 Debtor's existing and future acquired cash collateral, the "Cash Collateral").

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7 G. KeyBank caused a UCC-1 financing statement to be filed with respect to the Prepetition
8 Collateral with the Washington Department of Licensing on October 1, 2019, Filing Number 2019-274-
9 7933-1.

10 H. Pursuant to his Commercial Guaranty dated July 26, 2023, Ronald D. Dotzauer
11 ("Dotzauer"), the Debtor's Chief Executive Officer and 95% majority owner, provided KeyBank with
12 his continuing, absolute and unconditional personal guaranty of the KeyBank Loan and all other existing
13 and future obligations of the Debtor to KeyBank (the "Dotzauer Guaranty"). Since September 30, 2022,
14 Debtors have paid Dotzauer \$787,252.43 in wages and other payments, including payments on his
15 personal car and boat.

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16 I. KeyBank depository account ending in 4654 (the "KeyBank Operating Account") was
17 the Debtor's primary bank account prior to the Petition Date. Within 30 days of the Petition Date, the
18 Debtor transferred approximately \$3.0 million of KeyBank's Pre-Petition Cash Collateral from its
19 KeyBank Operating Account to a Bank of America account ending in 9722 (the "B of A Account").

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20 I. The KeyBank Loan is guaranteed by Ron Dotzauer.

21 J. I. As detailed in the Motion and ~~demonstrated by~~ the budget attached hereto as Exhibit A
22 (the "Interim Budget"), ~~Budget~~, the Debtor requires the interim use of Cash Collateral to pay certain
23 obligations in order to avoid immediate and irreparable harm to its operations pending the Court's
consideration of authorizing further use of cash collateral at a final hearing on the Motion set for 9:00

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1 ~~a.m. December 22, 2023 (the "Final Hearing"), continue its ongoing operations in the ordinary course~~
 2 ~~of business and to avoid disruption of such operations.~~ The Debtor is unable to obtain unsecured credit
 3 or financing, ~~and the Court finds and concludes that Debtor and its estate will suffer immediate and~~
 4 ~~irreparable harm if the relief approved hereby is not granted.~~

5 J. ~~This Court concludes that E~~ entry of this Order is in the best interests of the Debtor's
 6 creditors and its estate, ~~because its implementation, among other things, will allow the Debtors to remain~~
 7 ~~in business by providing the working capital necessary to sustain ongoing working capital requirements~~
 8 ~~and to fund the expenses of this chapter 11 case.~~ Absent the entry of this Order and the Debtor's interim
 9 use of Cash Collateral, the Debtor's estate and business operations would risk ~~would be~~ immediately
 10 and irreparably harmed.

11 K. Pursuant to §§ 361, 362, 363 and 364 of the Bankruptcy Code, the ~~Debtor has proposed~~
 12 ~~to provide~~ adequate protection provided in this Order for KeyBank's interests in the Cash Collateral
 13 ~~on the terms provided for herein and in accordance with the Interim Budget are proper attached hereto~~
 14 ~~as Exhibit A (as amended in accordance herewith, the "Budget").~~

15 L. ~~As part of the Budget and the Debtor's request to use Cash Collateral, the Debtor~~
 16 ~~proposes to create and fund a professional fund ("Professional Fund") on a postpetition basis to pay the~~
 17 ~~professional fees and costs incurred by the Debtor and the Official Unsecured Creditors Committee~~
 18 ~~("Committee"), if any, as the Court may authorize and allow by subsequent order following notice and~~
 19 ~~hearing. The Professional Fund would also be used to satisfy fees assessed pursuant to 28 U.S.C. §~~
 20 ~~1930.~~

21 M. ~~The Debtors propose to deposit all funds budgeted for the Professional Fund with Bush~~
 22 ~~Kornfeld LLP ("Bush Kornfeld"), attorneys for the Debtor, where such funds would be held in trust~~
 23 ~~pending further order of the Court following notice and hearing. The Debtor believes that the proposed~~

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1 ~~Professional Fund is appropriate given the size and nature of these cases and the creation and~~
2 ~~participation of a Committee in these cases.~~

3 LN. This Court has jurisdiction over these proceedings and the parties and property affected
4 by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core
5 proceeding as defined in 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28 U.S.C. §§
6 1408 and 1409.

7 MO. ~~All of the~~ relief ~~granted in this Order proposed by the Debtor~~ with respect to Cash
8 Collateral use, the grant of adequate protection to KeyBank and other provisions are consistent with
9 this Court's Guidelines for Cash Collateral and Financing Stipulations.

10 NP. Based on the record before this Court, including the Interim Budget, the fact that ongoing
11 operations will continue to maximize the value of the Debtor's assets and estate, and the granting of
12 adequate protection as set forth herein, the Court finds that, on an interim basis, the interests of KeyBank
13 are adequately protected, as contemplated by §§ 361, 362, 363 and 364 of the Bankruptcy Code.

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ORDER (1) AUTHORIZING INTERIM USE OF CASH
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3 **ORDER**

4 Based on the foregoing findings, it is hereby

5 **ORDERED:**

6 1. Motion Granted. The Motion is granted on an interim basis pursuant to the terms and
7 conditions of this order ~~with respect to the Debtor's proposed use of Cash Collateral, grant of adequate~~
8 ~~protection to KeyBank~~ (this "Interim Order").

9 2. Use of Cash Collateral and DIP Loan. Subject to the terms and conditions of this Interim
10 Order, the Debtor is authorized to use Cash Collateral (a) solely during the Interim Period (as defined
11 below), (b) to pay the costs and expenses and for the purposes identified in the Interim Budget with
12 respect to the Debtor's business operations, and (c) in amounts not to exceed the aggregate amount of
13 \$ _____ authorized under the Interim Budget, subject only to the adjustments permitted under
14 Paragraph 3 of this Order, ~~provided that the Debtor shall in no event expend any of its Cash Collateral~~
15 ~~to pay the obligations of any of its non-debtor affiliates.~~

16 3. Interim Budget. The Debtor is authorized to use Cash Collateral in accordance with the
17 Interim Budget ~~through the conclusion of the Final Hearing.~~ The Debtor may exceed the payment
18 amounts contemplated by a line item of the Interim Budget ~~prior to the conclusion of the Final~~
19 ~~Hearing for a Budget period,~~ so long as the Debtor's total payments for the line item for the period do
20 not exceed the budgeted amount by more than ten percent (10%), provided, however, that the Debtor
21 may roll forward any expense in any line item during this interim period to a later time and may pay
22 that expense when due.

23 4. ~~Carve Out.~~ The Debtors are also authorized to use Cash Collateral to pay the following
costs, fees and expenses (collectively, the "Carve Out"): (a) the unpaid fees due and payable to the
Clerk of the Court and (b) contributions to the Professional Fund to the extent authorized under the

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~~Budget and use of those funds to pay professional fees incurred by the Debtor and/or the Committee, as authorized by this Court, as may be limited by ¶¶ 8 and 9, below and fees owed to the United States Trustee pursuant to 28 U.S.C. § 1930.~~

~~5-4. Adequate Protection.~~ As adequate protection for the Debtor's use of Cash Collateral:

a. ~~The Debtor shall withdraw and return all Cash Collateral on deposit in the B of A Account to the KeyBank Account. The Debtor shall deposit all Cash Collateral it has received, or in the future receives post-petition into the KeyBank Account and shall disburse all interim payments authorized under this Order only from Cash Collateral on deposit in the KeyBank Account.~~

b. ~~The Debtors shall pay to KeyBank interest at the non-default rate designated in the KeyBank Loan Documents Agreement and/or KeyBank Note on the payment dates set forth in those documents and shall otherwise perform all its other non-payment obligations to KeyBank. The Debtor shall also promptly provide such financial and operational information concerning the Debtor's interim use and proposed continuing use of Cash Collateral as KeyBank may reasonably request, including without limitation a full accounting of the Debtor's disposition of funds in the B of A Account.~~

c. ~~On or before December 13, 2023, the Debtor shall prepare and file with this Court a proposed budget (the "Final Budget") for the period from the date of the Final Hearing through March 31, 2024 and shall also file its proposed form of final order (the "Final Order") authorizing use of Cash Collateral. Prior to their filing, the Debtor shall meet and confer with KeyBank regarding the debtor's proposed Final Budget and Final Order.~~

~~b-d. KeyBank is hereby granted valid, binding, enforceable and perfected replacement liens on and security interests in all Post-Petition Collateral, Collateral consisting~~

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ORDER (1) AUTHORIZING INTERIM USE OF CASH COLLATERAL, (2) GRANTING ADEQUATE PROTECTION, AND (3) SETTING FINAL HEARING – Page 7

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1 ~~of the Debtor's existing and future acquired personal property assets to their~~ same extent and
2 with the same validity and priority as KeyBank's ~~existing security interests liens in p~~Pre-petition
3 ~~c~~Collateral, to secure an amount equal to the decrease, if any, in the value of KeyBank's interest
4 in Cash Collateral as of the Petition Date. For purposes of this Order, "~~Post-P~~petition Collateral"
5 refers to (1) all post-petition property of Debtor that is of the same type and nature as the
6 Prepetition Collateral. Post-~~P~~petition Collateral does not include ~~avoidance actions or other~~
7 ~~Debtors' claims for relief arising under the Bankruptcy Code, such as those claims~~ arising under
8 sections 506(c), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code.

9 ~~e-c.~~ The Debtor shall continue to maintain insurance on its assets as the same existed
10 as of the Petition Date.

11 ~~d-b.~~ In accordance with ~~S~~section 507(b) of the Bankruptcy Code, if, notwithstanding
12 the foregoing protections, KeyBank ~~shall hold has~~ a claim allowable under section 507(a)(2) of
13 the Bankruptcy Code arising from the stay of action against the Prepetition Collateral from the
14 use, sale, or lease of such collateral, or from the granting of any lien on the collateral ~~and, then~~
15 KeyBank's ~~Section 507(b)~~ claim shall have priority over every other claim and administrative
16 expense allowable under section 507(a)(2) of the Bankruptcy Code, ~~but subordinate to the~~
17 ~~Carve Out, in any amount equal to the decrease, if any, in the value of KeyBank's interest in the~~
18 ~~Prepetition Collateral as a result of the Debtors' use of Cash Collateral.~~

19 ~~6-5.~~ Evidence of Adequate Protection Liens. This Interim Order shall be sufficient for, and
20 conclusive evidence of, the priority, perfection, and validity of the Adequate Protection Liens and
21 KeyBank shall not be required to file or serve mortgages, UCC financing statements, notices of lien or
22 similar instruments, or take any other action in order to preserve the priority, perfection, and validity of
23 the Prepetition Credit Agreement Adequate Protection Liens.

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1 ~~7. Professional Fund. The Professional Fund is approved, with Debtor to fund the amounts~~
2 ~~consistent with the Budget for that purpose. The Professional Fund shall be held on deposit and~~
3 ~~maintained in the trust account of Bush Kornfeld, attorneys for the Debtor, pending further order of the~~
4 ~~Court following notice and hearing for the pro rata benefit of the professionals engaged by the Debtor~~
5 ~~and the Committee, if any. To the extent amounts deposited into the Professional Fund exceed the~~
6 ~~allowed fees and costs of those professionals, such excess funds shall remain subject to the rights of~~
7 ~~KeyBank.~~

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8 ~~8.6. Final Hearing. The final hearing on the Motion (the "Final Hearing") is hereby set for~~
9 ~~9:00 a.m., December 22, 2023. No later than Monday, December 4, 2023, the Debtor shall file and~~
10 ~~serve a notice of the Final Hearing in compliance with Bankruptcy Rule 4001, at~~
11 ~~Objections shall be due on or before Monday, December 18, 2023 and the Debtor's reply to~~
12 ~~Any reply shall be due on or before Wednesday, December 20, 2023.~~

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13 // /End of Order/ //

14 Presented by:

15 BUSH KORNFELD LLP

16 By

17 Christine M. Tobin-Presser, WSBA #27628

18 Thomas A. Buford, WSBA #52969

19 Jason Wax, WSBA #41944

20 *Proposed Attorneys for Debtor-in-Possession*

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EXHIBIT B

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

STRATEGIES 360, INC.,

Debtor.

No. 23-12303

[PROPOSED] ORDER (1)
AUTHORIZING INTERIM USE OF
CASH COLLATERAL, (2) GRANTING
ADEQUATE PROTECTION, AND (3)
SETTING FINAL HEARING

THIS MATTER came before the Court on the motion (the “Motion”) of Strategies 360, Inc. (the “Debtor”), debtor-in-possession in this case, pursuant to §§ 105, 361, 362, 363 and 364 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-3 and 9013-1(d)(2)(E) of the Local Rules of Bankruptcy Procedure for the Western District of Washington (the “Local Rules”), for the entry of an order authorizing, on an interim basis, the Debtor’s use of cash collateral pursuant to a Budget (defined below), authorizing the Debtor to grant, on an interim basis, adequate protection in favor of KeyBank National Association (“KeyBank”). The Court has reviewed the files and records herein, makes the following findings of fact, and reaches the following findings of

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1 fact and conclusions of law based on the written submissions of the Debtors and representations made
2 at the hearing on the Motion:

3 FINDINGS AND CONCLUSIONS

4 On an interim basis, the Court makes the following findings of fact and conclusions of law with
5 respect to the relief granted in this Order:

6 General Background

7 A. The Debtor filed its petition for relief under Chapter 11 of the Bankruptcy Code (“Case”)
8 on November 27, 2023 (the “Petition Date”). The Debtor retains control over its assets and continues
9 to operate its business pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

10 B. The Debtor sent notice of the hearing on the Motion to KeyBank; the U.S. Trustee; the
11 U.S. Attorney’s Office; all of its creditors; and state and federal taxing authorities. Such notice is
12 adequate and reasonable under the circumstances pursuant to Bankruptcy Rules 4001 and Local
13 Rules 4001-3 and 9013-1(d)(2)(E).

14 The Prepetition Credit Agreement

15 C. As of the Petition Date, the Debtor is indebted to KeyBank under a fully matured, past
16 due and owing line of credit with a balance of approximately \$3,665,639.30 as of November 22, 2023
17 (the “KeyBank Loan”).

18 D. The terms of the KeyBank Loan are set forth in various loan documents, including a
19 Business Loan Agreement dated March 27, 2023 (the “KeyBank Loan Agreement”), Promissory Note
20 dated November 5, 2021 (the “KeyBank Note”) and Security Agreement dated November 5, 2021 (the
21 “KeyBank Security Agreement”).

22 E. The KeyBank Note matured on November 1, 2023.
23

1 F. Pursuant to the KeyBank Security Agreement, the Debtor granted KeyBank a blanket
2 security interest in the Debtor's personal property (the "Pre-Petition Collateral") to secure the KeyBank
3 Loan. The Pre-Petition Collateral includes the Debtor's accounts receivable (the "A/R"), cash,
4 depository accounts and all other cash proceeds of Pre-Petition Collateral (the "Pre-Petition Cash
5 Collateral," and together with all the Debtor's existing and future acquired cash collateral, the "Cash
6 Collateral").

7 G. KeyBank caused a UCC-1 financing statement to be filed with respect to the Prepetition
8 Collateral with the Washington Department of Licensing on October 1, 2019, Filing Number 2019-274-
9 7933-1.

10 H. Pursuant to his Commercial Guaranty dated July 26, 2023, Ronald D. Dotzauer
11 ("Dotzauer"), the Debtor's Chief Executive Officer and 95% majority owner, provided KeyBank with
12 his continuing, absolute and unconditional personal guaranty of the KeyBank Loan and all other existing
13 and future obligations of the Debtor to KeyBank (the "Dotzauer Guaranty"). Since September 30, 2022,
14 Debtors have paid Dotzauer \$787,252.43 in wages and other payments, including payments on his
personal car and boat.

15 I. KeyBank depository account ending in 4654 (the "KeyBank Operating Account") was
16 the Debtor's primary bank account prior to the Petition Date. Within 30 days of the Petition Date, the
17 Debtor transferred approximately \$3.0 million of KeyBank's Pre-Petition Cash Collateral from its
18 KeyBank Operating Account to a Bank of America account ending in 9722 (the "B of A Account").

19 I. .

20 JI. As detailed in the Motion and the budget attached hereto as Exhibit A (the "Interim Budget"),
21 the Debtor requires the interim use of Cash Collateral to pay certain obligations in order to avoid
22 immediate and irreparable harm to its operations pending the Court's consideration of authorizing
23

1 further use of cash collateral at a final hearing on the Motion set for 9:00 a.m. December 22, 2023 (the
2 “Final Hearing”). The Debtor is unable to obtain unsecured credit or financing.

3 J. Entry of this Order is in the best interests of the Debtor’s creditors and its estate. Absent
4 the entry of this Order and the Debtor’s interim use of Cash Collateral, the Debtor’s estate and business
5 operations would risk immediate and irreparable harm.

6 K. Pursuant to §§ 361, 362, 363 and 364 of the Bankruptcy Code, the adequate protection
7 provided in this Order for KeyBank’s interests in the Cash Collateral and in accordance with the Interim
8 Budget are proper.

9
10 L. This Court has jurisdiction over these proceedings and the parties and property affected
11 by this Order pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core
12 proceeding as defined in 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28 U.S.C. §§
13 1408 and 1409.

14 M. The relief granted in this Order with respect to Cash Collateral use, the grant of adequate
15 protection to KeyBank and other provisions are consistent with this Court’s Guidelines for Cash
16 Collateral and Financing Stipulations.

17 N. Based on the record before this Court, including the Interim Budget, the fact that ongoing
18 operations will continue to maximize the value of the Debtor’s assets and estate, and the granting of
19 adequate protection as set forth herein, the Court finds that, on an interim basis, the interests of KeyBank
20 are adequately protected, as contemplated by §§ 361, 362, 363 and 364 of the Bankruptcy Code.

21 *[Remainder of page intentionally left blank]*
22
23

1 **ORDER**

2 Based on the foregoing findings, it is hereby

3 **ORDERED:**

4 1. Motion Granted. The Motion is granted on an interim basis pursuant to the terms and
5 conditions of this order (this “Interim Order”).

6 2. Use of Cash Collateral and DIP Loan. Subject to the terms and conditions of this Interim
7 Order, the Debtor is authorized to use Cash Collateral (a) solely during the Interim Period (as defined
8 below), (b) to pay the costs and expenses and for the purposes identified in the Interim Budget with
9 respect to the Debtor’s business operations, and (c) in amounts not to exceed the aggregate amount of
10 \$_____ authorized under the Interim Budget, subject only to the adjustments permitted under
11 Paragraph 3 of this Order, provided that the Debtor shall in no event expend any of its Cash Collateral
12 to pay the obligations of any of its non-debtor affiliates.

13 3. Interim Budget. The Debtor is authorized to use Cash Collateral in accordance with the
14 Interim Budget through the conclusion of the Final Hearing. The Debtor may exceed the payment
15 amounts contemplated by a line item of the Interim Budget prior to the conclusion of the Final Hearing,
16 so long as the Debtor’s total payments for the line item for the period do not exceed the budgeted amount
17 by more than ten percent (10%), provided, however, that the Debtor may roll forward any expense in
18 any line item during this interim period to a later time and may pay that expense when due.

19
20 4. Adequate Protection. As adequate protection for the Debtor’s use of Cash Collateral:

21 a. The Debtor shall withdraw and return all Cash Collateral on deposit in the B of A
22 Account to the KeyBank Account. The Debtor shall deposit all Cash Collateral it has received,
23 or in the future receives post-petition into the KeyBank Account and shall disburse all interim

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1 payments authorized under this Order only from Cash Collateral on deposit in the KeyBank
2 Account.

3 b. The Debtor shall pay to KeyBank interest at the non-default rate designated in
4 the KeyBank Loan Documents on the payment dates set forth in those documents and shall
5 otherwise perform all its other non-payment obligations to KeyBank. The Debtor shall also
6 promptly provide such financial and operational information concerning the Debtor's interim
7 use and proposed continuing use of Cash Collateral as KeyBank may reasonably request,
8 including without limitation a full accounting of the Debtor's disposition of funds in the B of A
9 Account.

10 c. On or before December 13, 2023, the Debtor shall prepare and file with this Court
11 a proposed budget (the "Final Budget") for the period from the date of the Final Hearing through
12 March 31, 2024 and shall also file its proposed form of final order (the "Final Order")
13 authorizing use of Cash Collateral. Prior to their filing, the Debtor shall meet and confer with
14 KeyBank regarding the debtor's proposed Final Budget and Final Order.

15 d. KeyBank is hereby granted valid, binding, enforceable and perfected
16 replacement liens on and security interests in all Post-Petition Collateral consisting of the
17 Debtor's existing and future acquired personal property assets to the same extent and with the
18 same validity and priority as KeyBank's existing security interests in pre-petition collateral, to
19 secure an amount equal to the decrease, if any, in the value of KeyBank's interest in Cash
20 Collateral as of the Petition Date. For purposes of this Order, "Post-Petition Collateral" refers
21 to (1) all post-petition property of Debtor that is of the same type and nature as the Prepetition
22 Collateral. Post-Petition Collateral does not include avoidance actions or other claims arising
23 under sections 506(c), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code.

1 e. The Debtor shall continue to maintain insurance on its assets as the same existed
2 as of the Petition Date.

3 b. In accordance with Section 507(b) of the Bankruptcy Code, if, notwithstanding
4 the foregoing protections, KeyBank shall hold a claim allowable under section 507(a)(2) of the
5 Bankruptcy Code arising from the stay of action against the Prepetition Collateral from the use,
6 sale, or lease of such collateral, or from the granting of any lien on the collateral and KeyBank's
7 Section 507(b) claim shall have priority over every other claim and administrative expense
8 allowable under section 507(a)(2) of the Bankruptcy Code..

9 5. Evidence of Adequate Protection Liens. This Interim Order shall be sufficient for, and
10 conclusive evidence of, the priority, perfection, and validity of the Adequate Protection Liens and
11 KeyBank shall not be required to file or serve mortgages, UCC financing statements, notices of lien or
12 similar instruments, or take any other action in order to preserve the priority, perfection, and validity of
13 the Prepetition Credit Agreement Adequate Protection Liens.

14
15 6. Final Hearing. The final hearing on the Motion (the "Final Hearing") is hereby set for
16 9:00 a.m., December 22, 2023. No later than Monday, December 4, 2023, the Debtor shall file and
17 serve a notice of the Final Hearing in compliance with Bankruptcy Rule 4001. Objections shall be due
18 on or before Monday, December 18, 2023 and the Debtor's reply to shall be due on or before
19 Wednesday, December 20, 2023..

20 // /End of Order/ //

21 Presented by:

22 BUSH KORNFELD LLP
23

1 By _____
2 Christine M. Tobin-Presser, WSBA #27628
3 Thomas A. Buford, WSBA #52969
4 Jason Wax, WSBA #41944
5 *Proposed Attorneys for Debtor-in-Possession*
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